

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANK FISCHER, an individual,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:05-cv-00763-DRB
)	
SYSKO FOOD SERVICES OF)	
CENTRAL ALABAMA, INC., et al.,)	
)	
Defendants.)	

DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION TO REMAND

COMES NOW the Defendant Sysco Food Services of Central Alabama, Inc. (hereinafter “Sysco”) and makes the following response to Plaintiff’s Motion to Remand:

1. As stated in its Notice of Removal, Sysco agrees that Counts One and Two of Plaintiff’s Complaint premised upon the Alabama Workers’ Compensation Act should be remanded to the Circuit Court of Montgomery County, Alabama.

2. Sysco also agrees that Count Three of Plaintiff’s Complaint, premised upon the Federal Age in Employment Discrimination Act, should remain in this Court.

3. Plaintiff's Motion to Remand Counts One and Two only should be granted.

s/William D. Smith, Jr.
William D. Smith, Jr.
ASB-2906-T74W
Attorney for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512
(205) 868-6000
(205) 868-6099 Facsimile
wsmith@starneslaw.com

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Davis L. Middlemas, Esq.
MIDDLEMAS & BERRY, LLP
205 North 20th Street, Suite 210
Birmingham, Alabama 35203

Donald B. Kirkpatrick II
Carr, Allison, Pugh, Howard, Oliver & Sisson, P.C.
100 Vestavia Parkway, Suite 200
Birmingham, Alabama 35216

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

s/William D. Smith, Jr.

William D. Smith, Jr.
ASB-2906-T74W
Attorney for Defendant
Sysco Food Services
of Central Alabama, Inc.
STARNES & ATCHISON LLP
100 Brookwood Place, 7th Floor
P. O. Box 598512
Birmingham, Alabama 35259-8512
(205) 868-6000
(205) 868-6099 Facsimile
wsmith@starneslaw.com